

BEFORE THE  
POSTAL REGULATORY COMMISSION  
WASHINGTON, DC 20268-0001

Competitive Product Prices  
Priority Mail  
Priority Mail Contract 93

Docket No. MC2014-47

Competitive Product Prices  
Priority Mail Contract 93 (MC2014-47)  
Negotiated Service Agreement

Docket No. CP2014-83

PUBLIC REPRESENTATIVE COMMENTS ON  
POSTAL SERVICE REQUEST TO ADD  
PRIORITY MAIL CONTRACT 93  
TO COMPETITIVE PRODUCT LIST

(September 26, 2014)

The Public Representative hereby provides comments pursuant to Order No. 2192.<sup>1</sup> In that Order, the Commission established the above referenced docket to receive comments from interested persons, including the undersigned Public Representative, on a Postal Service Request to add Priority Mail Contract 93 to the competitive product list (Agreement).<sup>2</sup> The Postal Service's Request includes a certification of compliance with 39 U.S.C. § (a)(1) and (3), a Statement of Supporting Justification, and a copy of Governors' Decision No. 11-6. The Postal Service also filed (under seal) a contract related to the proposed new product, and supporting financial data.

The Postal Service notes that Priority Mail Contract 89 is a competitive product "not of general applicability" within the meaning of 39 U.S.C. § 3632(b)(3). *Request at 1.*

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<sup>1</sup> Notice and Order Concerning the Addition of Priority Mail Contract 93 to the Competitive Product List, September 23, 2014.

<sup>2</sup> Request of the United States Postal Service to Add Priority Mail Contract 93 to Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data, September 18, 2014 (Request).

In addition, the Postal Service maintains that the prices and classification underlying the instant contract are supported by Governors' Decision No. 11-6.<sup>3</sup>

The contract's effective date will be set the day following the date on which the Commission issues all necessary regulatory approval. *Attachment B* at 1. The contract is to expire three (3) years from the effective date, unless (1) terminated by either party with thirty (30) days notice to the other party, (2) renewed by mutual agreement in writing, (3) superseded by a subsequent contract between the Parties, (4) ordered by the Commission or a court, or (5) required to comply with subsequently enacted legislation. *Id.* at 4.

## COMMENTS

The Public Representative has reviewed the instant contract, the Statement of Supporting Justification, as well as the financial data and the model filed under seal that accompanies the Postal Service's Request. The Public Representative concludes that Priority Mail Contract 93 should be categorized as a competitive product and added to the competitive product list. In addition, based on the financial workpapers filed by the Postal Service, it appears that the contract will to generate sufficient revenues to cover costs in its first year and thereby satisfy the requirements of 39 U.S.C. § 3633(a).

*Product List Assignment.* Pursuant to 39 U.S.C. § 3642, the Commission is required to consider whether "the Postal Service exercises sufficient market power that it can effectively set the price of such product substantially above costs, raise prices significantly, decrease quality, or decrease output, without risk of losing a significant level of business to other firms offering similar products." 39 U.S.C. § 3642(b)(1). Products over which the Postal Service exercises such power are categorized as market dominant while all others are categorized as competitive.

The Postal Service asserts that the contract is competitive and constrained by the existing market. *Request, Attachment D.* These assertions appear reasonable. Based upon these assertions, the Public Representative concludes that the Postal

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<sup>3</sup> Decision of the Governors of the United States Postal Service on the Establishment of Prices and Classifications for Domestic Competitive Agreements, Outbound International Competitive Agreements, Inbound International Competitive Agreements, and Other Non-Published Competitive Rates, March 22, 2011 (Governors' Decision No. 11-6).

Service's Request to add Priority Mail Contract 93 to the competitive product list is appropriate.

*Requirements of 39 U.S.C. § 3633.* Pursuant to 39 U.S.C. § 3633(a), the Postal Service's rates for competitive products must not result in the subsidization of competitive products by market dominant products; ensure that each competitive product will cover its attributable costs; and, ensure that all competitive products collectively contribute an appropriate share of the institutional costs of the Postal Service. Based upon a review of the financial model filed under seal with the Postal Service's Request, the negotiated prices in the instant contract should generate sufficient revenues to cover costs during the initial contract year. The contract is expected to remain in effect for a period of three years. However, the Postal Service provides no data to demonstrate that the contract will comply with the requirements of 39 U.S.C. § 3633(a) during the second and third years of the contract. This concern is mitigated somewhat by the fact that the terms of the contract provide a formula for an annual adjustment in the negotiated rates that would ordinarily permit revenues to cover costs during years 2 and 3. The Commission also has an opportunity to conduct an annual compliance review in its Annual Compliance Determination.

The Public Representative respectfully submits the foregoing comments for the Commission's consideration.

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